

FILED

May 25 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 10-0132

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*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

ROBERT JAMES COOK,

Petitioner and Appellant,

v.

ORDER

DIANA McCLAMMY,

Respondent and Appellee.

Self-represented petitioner Robert James Cook (Cook) has moved to add the Child Support Enforcement Division (CSED) to this cause as a party. Cook also has moved for this Court to clarify whether Cook's actions in mailing the transcripts via certified mail to the Attorney General, counsel for the CSED, the Administrator of CSED and counsel for the Respondent satisfied the Montana Rules of Appellate Procedure.

The District Court record reflects that CSED made a special appearance in the Eighth Judicial District Court, Cascade County, solely to dispute the Court's personal jurisdiction over CSED. M. R. App. P. 2(4) provides for modification of the caption on motion of a party or the Court's own motion "to more accurately reflect the actual alignment or status of a party." Cook contends that some of the issues on appeal directly relate to the special appearance by CSED. For example, Cook argues that one of the issues raised on appeal concerns CSED's reliance upon the constitutionality of § 40-4-910, MCA. We presume that Cook intended to cite § 40-5-910, MCA, which relates to distribution of child support payments. Nevertheless, Cook has failed to establish that including CSED in the caption would more accurately reflect the actual alignment or status of a party.

Cook states that he was uncertain if the District Court's check list constitutes a part of the record, and he is unsure if it was the Clerk of District Court's duty to send transcripts to

the other parties. Cook states that he is aware that it is his duty to ensure the record on appeal is sufficient.

No party has filed an objection to the manner or adequacy of service of the transcripts. As a result, we deem that any ruling upon the motion relating to the method of delivery of transcripts would be advisory or declaratory in nature. Therefore, we decline to address the adequacy of Cook's method of delivery of the transcripts. Upon receipt of the parties' briefs, the Court shall classify and decide the appeal in due course.

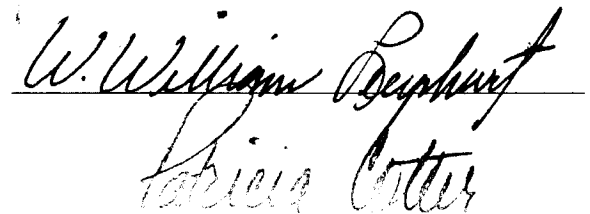
IT IS ORDERED that the motion to amend the caption is DENIED.

The Clerk of Court is directed to provide a copy of this Order to counsel of record and to Cook.

DATED this 3 day of May, 2010.

  
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Chief Justice

  
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Justices